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11 100 First Street, 27th Floor
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13 Telephone: (415) 348-6000
14 Fax: (415) 348-6001

15 Attorneys for Specially-Appearing Defendant
16 Navigators Insurance Co.,
17 dba Navigators Protection & Indemnity

FILED
DISTRICT COURT OF GUAM

FEB 06 2008 *Whe*

JEANNE G. QUINATA
Clerk of Court

IN THE DISTRICT COURT OF GUAM

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 MARWAN SHIPPING & TRADING CO.,
17 FIVE SEAS SHIPPING CO., LLC, and S.J.
18 GARGRAVE SYNDICATE 2724, *in*
personam,

19 Defendants.

20 AND CROSS-CLAIMS,
21 COUNTERCLAIMS, AND CLAIM IN
INTERVENTION

) Civil Case No.: 06-00011

) **SPECIALLY-APPEARING DEFENDANT**
) **NAVIGATORS INSURANCE**
) **COMPANY'S REQUEST TO FILE**
) **FACSIMILE FILING**

) Judge: Honorable Frances Tydingco-
) Gatewood

22
23 In accordance with General Rule 5.1(a), specially-appearing defendant Navigators
24 Insurance Company ("Navigators") hereby requests that the Court grant permission for
25 Navigators to submit the attached facsimile filing, **DECLARATION OF STANLEY L.**
26 **GIBSON IN SUPPORT OF SPECIALLY-APPEARING DEFENDANT NAVIGATORS**
27 **INSURANCE COMPANY'S MOTION TO SET ASIDE DEFAULT AND DISMISS FIRST**
28 **AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724.**

SPECIALLY-APPEARING REQUEST TO FILE
FACSIMILE FILING
Civ. Case No. 06-00011; Our File No. 2900.81

1 Mr. Gibson will be sending to Guam to the office of Thomas Sterling, an original copy of
2 the Declaration via courier. Upon receipt of the original signature, undersigned counsel will
3 immediately file it with the court.
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7 DATED: February 6, 2008

Respectfully submitted,

8 Stanley L. Gibson
9 GIBSON ROBB & LINDH LLP

10 BLAIR STERLING JOHNSON
11 MARTINEZ & LEON GUERRERO

12
13 By: 

14 Thomas C. Sterling
15 Attorneys for Defendant
16 NAVIGATORS INSURANCE CO., d.b.a.
17 Navigators Protection & Indemnity
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1 THOMAS C. STERLING
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15 Attorneys for Defendant to
16 Third-Party Complaint, Navigators Insurance Co.,
17 dba Navigators Protection & Indemnity

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12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 MARWAN SHIPPING & TRADING CO.,
16 FIVE SEAS SHIPPING CO., LLC, and S.J.
17 GARGRAVE SYNDICATE 2724, *in*
18 *personam*,

19 Defendants.

20 AND CROSS-CLAIMS,
21 COUNTERCLAIMS, AND CLAIM IN
22 INTERVENTION

Civil Case No.: 06-00011

DECLARATION OF STANLEY L.
GIBSON IN SUPPORT OF SPECIALLY-
APPEARING DEFENDANT
NAVIGATORS INSURANCE
COMPANY'S MOTION TO SET ASIDE
DEFAULT AND DISMISS FIRST
AMENDED THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE
SYNDICATE 2724

Judge: Honorable Frances Tydingco-
Gatewood

23 I, STANLEY L. GIBSON, do hereby declare as follows:

24 1. I have personal knowledge of the facts stated herein and could competently testify
25 to those facts if called as witness.

26 //

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28 DECLARATION OF STANLEY L. GIBSON IN SUPPORT OF
SPECIALLY-APPEARING DEFENDANT NAVIGATORS INSURANCE
COMPANY'S MOTION TO SET ASIDE DEFAULT AND DISMISS FIRST
AMENDED THIRD-PARTY COMPLAINT OF GARGRAVE
2724 Civ. Case No. 06-00011; Our File No. 2900.81

1 2. I am a partner in the San Francisco office of the law firm of Gibson Robb &
2 Lindh, who represent Special-Appearing Navigators Insurance Company ("Navigators") in this
3 action.

4 3. On November 2, 2007, the Court ordered the dismissal of Inchcape Shipping
5 Services Guam's Amended Complaint In Intervention against Navigators in this Action. A true
6 and correct copy of that Order is attached herewith as Exhibit A.

7 4. On November 14, 2007, Gargrave's Counsel, Forrest Booth, filed a Declaration of
8 Forrest Booth In Support of Motion for Leave to File Third-Party Complaint of S.J. Gargrave
9 Syndicate Against Navigators Protection & Indemnity. A true and correct copy of that
10 Declaration, without exhibits, is attached herewith as Exhibit B. At paragraph 12 of the
11 declaration, Mr. Booth states that "[o]n November 2 [2007], this Court dismissed without
12 prejudice the Amended Complaint in Intervention filed by Inchcape Shipping Services Guam
13 LLC (hereinafter "Inchcape"). As of that date, Navigators was no longer a party to this lawsuit."

14 5. Gargrave did not request in writing, pursuant to FRCP 4(d), that Navigators waive
15 service of process of Gargrave's First Amended Third-Party Complaint filed on November 30,
16 2007.

17 6. On or about November 30, 2007, counsel for Gargrave mailed a copy of the First
18 Amended Third-Party Complaint to my office in San Francisco, California. I do not recall
19 receiving a summons with this Complaint, nor could I locate such a summons after reviewing my
20 case file. On that same date, Gargrave's attorney mailed a letter to my office advising that
21 Gargrave also caused the Complaint to be delivered to Thomas C. Sterling, who had been
22 previously acting as Navigators' local counsel. Mr. Sterling advised my office that he did not
23 recall ever receiving a copy of the summons, nor could he locate such a copy in his case file.

24 7. On December 10, 2007, my office advised Gargrave's counsel, Forrest Booth,
25 that my office was not authorized to accept service of lawsuits on behalf of Navigators. A true

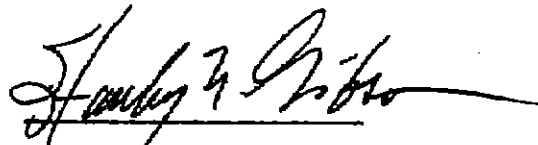
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28 DECLARATION OF STANLEY L. GIBSON IN SUPPORT OF
SPECIALLY-APPEARING DEFENDANT NAVIGATORS INSURANCE
COMPANY'S MOTION TO SET ASIDE DEFAULT AND DISMISS FIRST
AMENDED THIRD-PARTY COMPLAINT OF GARGRAVE
2724Civ. Case No. 06-00011; Our File No. 2900.81

1 and correct copy of that letter is attached as Exhibit C.

2 I declare under penalty of perjury of the laws of the United States of America that the
3 foregoing is true and correct.

4
5 Executed this 6th day of February 5, 2008 at 100 First St, 27th Floor, San Francisco,
6 California.

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9 Stanley L. Gibson

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28 DECLARATION OF STANLEY L. GIBSON IN SUPPORT OF
SPECIALLY-APPEARING DEFENDANT NAVIGATORS INSURANCE
COMPANY'S MOTION TO SET ASIDE DEFAULT AND DISMISS FIRST
AMENDED THIRD-PARTY COMPLAINT OF GARGRAVE
2724 Civ. Case No. 06-00011; Our File No. 2700.81

Exhibit A

1 THOMAS C. STERLING
2 BLAIR STERLING JOHNSON
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4 A Professional Corporation
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17 *Attorneys for Defendant Navigators Insurance Company,*
18 *d.b.a. Navigators Protection & Indemnity*

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IN THE DISTRICT COURT OF GUAM

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 MARWAN SHIPPING & TRADING CO.,
18 FIVE SEAS SHIPPING CO., LLC, and S.J.
19 GARGRAVE SYNDICATE 2724, *in*
20 *personam,*

21 Defendants.

22 AND CROSS-CLAIMS,
23 COUNTERCLAIMS, AND CLAIM IN
24 INTERVENTION

Civil Case No.: 06-00011

**ORDER DISMISSING INCHCAPE
SHIPPING SERVICES' AMENDED
COMPLAINT IN INTERVENTION
AGAINST NAVIGATORS INSURANCE
COMPANY**

Judge: Honorable Frances Tydingco-Gatewood

25 This matter came before the Court on motion made by Defendant Navigators Insurance
26 Company, pursuant to FRCP Rule 12(b)(6), to dismiss the Amended Complaint In Intervention
27 of Inchcape Shipping Services Guam against Navigators. ISS did not oppose the motion and
28 therefore,

ORDER DISMISSING ISS' AMENDED COMPLAINT IN
INTERVENTION AGAINST NAVIGATORS'
Civ. Case No. 06-00011; Our File No. 2900.81

NAVIGATORS' REQUEST
FOR ENTRY
OF ORDER OF DISMISSAL
Civ. Case No. 06-00011; Our
File No. 2900.81

1 IT IS HEREBY ORDERED that Inchcape Shipping Services Guam's Amended
2 Complaint In Intervention against Navigators be dismissed without prejudice.

3 SO ORDERED.
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28 ORDER DISMISSING ISS' AMENDED COMPLAINT IN
INTERVENTION AGAINST NAVIGATORS'
Civ. Case No. 06-00011; Our File No. 2900.81

- 2 -

Exhibit B

1 **THOMAS McKEE TARPLEY, JR.**

2 **A Professional Corporation**

3 Bank of Hawaii Building

134 Soledad Avenue, Suite 402

3 Hagatna, Guam 96910

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4 Facsimile: (671) 472-4526

Electronic mail: tarpley@guam.net

5 **FORREST BOOTH (Cal. Bar No. 74166) (Admitted *pro hac vice*)**

6 **RYAN C. DONLON (Cal. Bar No. 229292) (Admitted *pro hac vice*)**

SEVERSON & WERSON

7 A Professional Corporation

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8 San Francisco, CA 94111

Telephone: (415) 398-3344

9 Facsimile: (415) 956-0439

Electronic mail: fb@severson.com

10 Electronic mail: rcd@severson.com

11 Attorneys for Defendant, Cross-Claimant and

12 Counterclaimant S.J. GARGRAVE SYNDICATE 2724

13 **IN THE DISTRICT COURT OF GUAM**

14 **TERRITORY OF GUAM**

15 **UNITED STATES OF AMERICA,**

16 **Plaintiff,**

17 **vs.**

18 **INCHCAPE SHIPPING SERVICES GUAM,**
19 **LLC,**

20 **Plaintiff in Intervention,**

21 **vs.**

22 **MARWAN SHIPPING & TRADING CO.,**
23 **FIVE SEAS SHIPPING CO., LLC, and S.J.**
24 **GARGRAVE SYNDICATE 2724, in**
personam,

25 **Defendants.**

26 **AND CROSS-CLAIMS, COUNTERCLAIM,**
27 **AND CLAIM IN INTERVENTION**

Case No.: 1:06-CV-00011

**DECLARATION OF FORREST
BOOTH IN SUPPORT OF MOTION
FOR LEAVE TO FILE THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE
SYNDICATE 2724 AGAINST
NAVIGATORS PROTECTION &
INDEMNITY**

Complaint Date: April 19, 2006

Trial Date: May 12, 2008

1 S.J. GARGRAVE SYNDICATE 2724,

2 Third-Party Plaintiff,

3 vs.

4 NAVIGATORS PROTECTION &
5 INDEMNITY,

6 Third-Party Defendant.
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8

9 I, Forrest Booth, declare:

10 1. I am an attorney duly licensed to practice law before all courts in the State of
11 California, and am admitted *pro hac vice* herein. I am a member of the law firm of Severson &
12 Werson, counsel of record for Defendant, Cross-Claimant and Counterclaimant S.J. GARGRAVE
13 SYNDICATE 2724 (hereinafter "Gargrave").

14 2. I have personal knowledge of the facts stated in this Declaration, and if called as a
15 witness to testify as to them, I can and will competently do so.

16 3. On July 24, 2006, I filed a Third-Party Complaint herein, on behalf of Gargrave,
17 against NAVIGATORS PROTECTION & INDEMNITY ("Navigators") and AL-BUHAIRA
18 NATIONAL INSURANCE COMPANY ("Al-Buhaira"). Said Third-Party Complaint alleged
19 that Navigators had misrepresented material facts, and failed to disclose other material facts,
20 during the application for the Certificate of Financial Responsibility ("COFR") and policy of
21 pollution insurance underwritten for the M/V AJMAN 2 by Gargrave. Discovery later disclosed
22 that these were not viable claims against Navigators.

23 4. Accordingly, a dismissal dated January 31, 2007 was filed on February 1, 2007,
24 dismissing Navigators, without prejudice, from this litigation.

25 5. Attached hereto and marked as Exhibit A is a true and correct copy of the Petition
26 of Stanley L. Gibson to Appear *Pro Hac Vice* and Consent of Designated Co-Counsel, filed
27 herein on April 3, 2007. Since the filing of this petition, Mr. Gibson has been acting as counsel
28 for Navigators herein, and also in the closely related action entitled *Jose D. Leon Guerrero*

- 2 -

11620/0002/647872.1

DECL. OF BOOTH I/S/O MOTION FOR LEAVE TO FILE
THIRD-PARTY COMPLAINT Case No.: 1:06-CV-00011

1 *Commercial Port and M.J. Harrington Syndicate 2000 v. Marwan Shipping & Trading Company,*
2 *LLC, Sharjah, et al.*, Civil Action Case No. 07-00010 in this Court (hereinafter the "Port's
3 lawsuit").

4 6. Attached hereto and marked as Exhibit B is a true and correct copy of the Order
5 Granting Petitions of Stanley L. Gibson and Ellen G. Lauck for Admission *Pro Hac Vice*, which
6 was signed and filed herein by Magistrate Judge Manibusan on April 12, 2007.

7 7. I am counsel for plaintiff M.J. HARRINGTON SYNDICATE 2000 (hereinafter
8 "Harrington") in the Port's lawsuit. As a result, I am familiar with the pleadings and discovery in
9 that matter, as well as the pleadings and discovery herein.

10 8. Discovery in this action and the Port's lawsuit has disclosed that Titan Industries
11 ("Titan"), the salvage contractor retained by the U.S. Government to deal with the
12 M/V AJMAN 2 disaster, performed and billed for services involved in salvaging the vessel in
13 August of 2004. Salvage expenses are typically insured under a vessel's hull and machinery
14 insurance policy.

15 9. Discovery in this action and the Port's lawsuit has disclosed that Titan performed
16 services in August of 2004 for the removal of the wreck of the M/V AJMAN 2 from Family
17 Beach in Apra Harbor, Guam. Attached hereto and marked as Exhibit C is a true and correct
18 copy of the cover page, as well as of page 2 of the "Risks Insured" section, of Navigators'
19 Certificate of Protection and Indemnity Insurance No. LN04PN1000169, issued to Marwan
20 Shipping & Trading Co. and insuring the vessel AJMAN 2. Page 2 of the Risks Insured section
21 contains paragraph 5 entitled "Liabilities for the Removal of a Wreck".

22 10. All parties in the Port's lawsuit have agreed to a mediation of the dispute, to be
23 held in London, England, during the week of December 3, 2007. Counsel are discussing
24 resolving that matter, and it is possible that the case will be settled before the mediation convenes.
25 Navigators, through their San Francisco-based legal counsel (Mr. Gibson), have agreed to
26 participate in that mediation.

27 11. My clients are syndicates of Underwriters at Lloyds, London. From time to time
28 the lead claims adjuster at the Gargrave Syndicate has had direct conversations about the

1 AJMAN 2 claims with employees of Navigators in London. The Gargrave Syndicate was told on
2 a number of occasions that Navigators would be willing to engage in a mediation of the
3 AJMAN 2 disputes, but only if the Port's lawsuit and this action were mediated together, as a
4 package. Attached hereto and marked as Exhibit D is a true and correct copy of the relevant
5 portion of an email from Gargrave's Senior Claims Adjuster Myles Sunley to me, dated
6 October 2, 2007, stating that Navigators had represented to him that Navigators wished to
7 "conclude" (settle) both the pollution and pier damage cases "in the same negotiation."

8 12. On November 2, this Court dismissed without prejudice the Amended Complaint
9 in Intervention filed by Inchcape Shipping Services Guam LLC (hereinafter "Inchcape"). As of
10 that date, Navigators was no longer a party to this lawsuit.

11 13. On several occasions in late October and November 2007, I have had telephone
12 conversations with Mr. Gibson, counsel for Navigators. During those conversations, Mr. Gibson
13 advised me that his client is no longer interested in mediating this action, because Navigators is
14 no longer a party to this lawsuit, and therefore, in his view, is no longer involved.

15 14. It is my understanding that one of the reasons the parties originally agreed to set
16 aside two days for the London mediation was that one day would be devoted to resolving the
17 Port's lawsuit, and one day to resolving this lawsuit.

18 15. In my opinion, based on 30 years as a maritime lawyer, this action brought by the
19 United States is readily susceptible of settlement. Counsel for defendants Marwan Shipping &
20 Trading Co., Five Seas Shipping Co., LLC and Al-Buhaira have indicated to me that their clients
21 are desirous of settling this lawsuit.

22 16. Mr. Gibson, counsel for Navigators, has indicated to me that he is prepared to
23 travel to London to participate in one or two days of mediation during the week of December 3,
24 2007, the dates currently agreed upon for mediation, although he has not yet agreed to mediate
25 this dispute at the same time as the Port's lawsuit.

1 Sworn this 8th day of November, 2007, under penalty of perjury under the laws of the
2 State of California and of the United States at San Francisco, California.

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5 By: 
6 FORREST BOOTH
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DECL. OF BOOTH I/S/O MOTION FOR LEAVE TO FILE
THIRD-PARTY COMPLAINT Case No.: 1:06-CV-00011

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CERTIFICATE OF SERVICE

I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on November 13, 2007, I caused to be served a true and correct copy of the **DECLARATION OF FORREST BOOTH IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724 AGAINST NAVIGATORS PROTECTION & INDEMNITY** to the following:

Mike W. Schwab, Esq.
OFFICE OF THE U.S. ATTORNEY
108 Hernan Cortez Avenue, Suite 500
Hagatna, Guam 96910

R. Michael Underhill
Attorney in Charge, West Coast Office
MIMI MOON
Trial Attorney
Torts Branch, Civil Division
U.S. DEPARTMENT OF JUSTICE
450 Golden Gate Avenue, Room 7-5395
P.O. Box 36028
San Francisco, CA 94102-3463
[Courtesy copy]

Attorneys for Plaintiff and Counterdefendant United States of America

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John E.D. Powell, Esq.
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524 Second Avenue, Suite 500
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[Courtesy copy]

*Attorneys for Defendants and Cross-Defendants Marwan Shipping & Trading Co.;
Five Seas Shipping Co., LLC; and Al-Buhaira National Insurance Company*

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CARLSMITH BALL LLP
Bank of Hawaii Building, Suite 401
134 West Soledad Avenue
Hagatna, Guam 96910

Attorneys for Intervenor Inchcape Shipping Services Guam LLC

Dated this 13 day of November, 2007.



DOROTHEA QUICHOCHO

Exhibit C

Stanley L. Gibson
G. Geoffrey Robb
Peter A. Lindh
Joshua E. Kirsch
Michael J. Cummins
Jennifer T. Sanchez

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Mark E. Lovell, Jr.
Joshua A. Southwick
Shaul Serban
Chelsea Luan

December 10, 2007

SEVERSON & WERSON
ATTN: FORREST BOOTH
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

Re: United States of America v. Marwan Shipping & Trading Company
LLC, et al.
District Court of Guam Case No. 06-00011
Our File No. 2900.81

Dear Forrest:

We are not authorized to accept service of lawsuits on behalf of Navigators P&I. We are returning the documents you sent to us.

Very truly yours,

GIBSON ROBB & LINDH LLP

By 
Shaul Serban

Enclosures